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In The Supreme Court Of The United States

No. 1150

OCTOBER TERM 1967

SAM TUCKY,
Petitioner-Appellant,

vs.

HAROLD K. L. CASTLE, and
KANEOHE RANCH COMPANY LIMITED
Respondents-Appellees.

PETITION FOR WRIT OF CERTIORARI
APPENDIX "A", "B" and "C"

I certify that a copy of this Petition was personally delivered to the law firm of Anderson, Wrenn & Jenks and to C. Jepson Garland, Esq., attorneys for Respondents-Appellees herein.

Joseph A. Ryan

JOSEPH A. RYAN
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925 Bethel Street
Honolulu, Hawaii 96813

RYAN & RYAN
Of Counsel

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In The Supreme Court Of The United States

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vs.
HAROLD K. L. CASTLE, AND
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Respondents-Appellees.

PETITION FOR WRIT OF CERTIORARI

Petitioner, SAM TUCKY, prays that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the State of Hawaii filed and entered November 14, 1967 and the final judgment entered after Petition for Rehearing on December 12, 1967.

OPINION BELOW

The opinion of the Supreme Court of the State of Hawaii is contained in an unreported Memorandum of Opinion dated November 14, 1967. (Appendix A).

A petition for rehearing was duly filed thereafter and said petition was denied. Thereafter Judgment on Appeal was filed December 12, 1967. (Appendix B).

A. JURISDICTION OF THIS COURT

1. Dates and Times of Entry of Judgment and Orders.

a. On February 10, 1967 Summary Judgment was entered, Petitioner's complaint was dismissed and judgment was entered on the counterclaim and it was

also ordered that a writ of possession issue to restore the premises hereunto Kaneohe Ranch Company Limited, and to oust Petitioner and all persons holding under him effective March 1, 1967.

b. On February 27, 1967 an Order Amending Summary Judgment and Final Judgment was entered February 27, 1967 which said order amended the effective date of the writ of possession to May, 1967.

The final Judgment aforesaid was appealed to the Supreme Court of the State of Hawaii and is designated No. 4659. In the Supreme Court of the State of Hawaii:

The Judgment appealed from was affirmed (Appendix A).

Petition for Rehearing was denied without argument.

Judgment on Appeal was entered December 12, 1967. (Appendix B).

2. STATUTORY PROVISION CONFERRING JURISDICTION

The jurisdiction of this Court to review said Judgment is invoked ~~until~~ under Title 28, U. S. C. Section 1257 (3) with respect to violations of Amendment 13, Section 1 and Section 2 and with respect to rights and privileges set up and claimed under the guarantee of the Fourteenth Amendment to the Constitution of the United States.

B. QUESTIONS PRESENTED FOR REVIEW

In this case Sam Tucky, a naturalized citizen of Japanese ancestry, brought a civil action for Specific Performance and Equitable Relief relative to his right to continue to live on and work a 7.11 acre farm he

cut out of the jungle, in Maunawili, County of Honolulu (Island of Oahu) Hawaii.

The Hawaii Rules of Civil Procedure are modeled after the Federal Rules. Rule 1 reads, "These rules govern the proceedings in the Circuit Court of the Territory in all suits of a civil nature whether cognizable as cases at law or in equity . . . They shall be construed to secure the just, speedy and inexpensive determination of every action."

Summary Judgment was entered against him, and he was dispossessed, and tens of thousands of dollars of his property and labor were forfeited to the respondents. He received no equitable relief whatsoever and costs were awarded to the respondents.

The Court did not construe the instrument under which Sam Tucky held possession and invested his money and labor. The Court seems to have construed the Hawaii Rules of Civil Procedure so as to secure the "just, speedy and inexpensive determination" of the case for the Respondents.

The result is more than an unjust enrichment. It is in the nature of a confiscation by the state of the property and services of one human being and a delivering over of them to another.

This result is more discernable when certain facts are set forth.

1. Sam Tucky is an old man.

2. He is stripped of tens of thousands of dollars of property.

3. The Lessor owns the adjoining 13,888 acres.

4.* 72 major private landholders own 47% of the land in the State of Hawaii.

5.* The State of Hawaii owns another 38.7% of the land.

6.* Collectively, individual landowners (withholdings under 1,000 acres) own less than 5% of the land in the State of Hawaii.

7. A dispossessed farmer simply cannot walk down the road "a piece" and lease another farm in the State of Hawaii.

8. The farmer herein hacked this farm out of rainforest jungle growth.

(*Taken from *"Public Land Policy on Hawaii:* Major Landowners Legislative Reference Bureau, Scale of Hawaii Reject #3, 1967.)

There are several Constitutional questions that seem to be contained herein.

QUESTION NO. 1

Was the action of the State Court in granting summary judgment against the farmer, dismissing his equity petition, dispossessing the farmer with the resultant forfeiture of his property and property developed by his years of labor, a violation of Amendment 13 of the Constitution of the United States in that his years of labor are now converted by the State Court into years of involuntary servitude?

QUESTION NO. 2

This question is concerned with Equity. (a) Does equity still exist as a part of the law of the land so as to have the Constitutional worthiness of Due Process or was the merger of law and equity a consumption of equity by the law?

(b) Does the Equal Protection of the Law clause include the protection of equitable rights?

QUESTION NO. 3

When the State Court granted summary judgment and summarily evicted the farmer and delivered over the farmer's home (which the farmer had built) all of his improvements, including thousands of dollars invested in tropical fruit trees, plants and flowers and years of daily labor against the jungle regrowth did the State violate Title 42 U.S.C. Sec. 1994 and Amendment 13 Section 2 of the Constitution of the United States of America?

QUESTION NO. 4

On the apeal to the Supreme Court of the State of Hawaii was Petitioner herein deprived of due process of law and/or the equal protection of the law in violation of Amendment 14 when the said court of last resort rendered an oral opinion finding the appeal to be without merit although the Appellant had complied with all rules relative to perfecting the appeal and had raised seven substantial questions of law that carried with them seven specifications of error, each of which said specification was supported by citation to Hawaii statutes and Hawaii cases, as well as general text material and constitutional law?

QUESTION NO. 5

Where the law of a state pronounced by its highest court is, and remains, to the effect:

> ". . . It is reasonable, it is natural, that when a contract puts into the power of one man to say that under certain contingencies, of which he is to be the judge, he shall enter upon the house or home or property of another, and eject him instantly, and take possession, it is reasonable, it is proper, that the contract and the acts which justify such

a course of conduct should be construed rigidly against the exercise of the right." Hawaiian Homes Commission vs. Bush & Horcajo 43 H 285, may a State Court therein grant summary judgment and evict by strictly construing rigidly in favor of the exercise of the right to enter upon the home and property of another without depriving the evicted party of equal protection of the law?

C. CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

AMENDMENT XIII

Section 1. Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

TITLE 42, U.S.C. SEC. 1994

"The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regula-

tions, or usages of any Territory or State, which have heretofore establish, maintain or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void."

HAWAII RULES OF CIVIL PROCEDURE

Rule 1. *Scope of Rules.* These rules govern the procedure in the circuit courts of the Territory in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Rule 2. *One Form of Action.* There shall be one form of action to ge known as "civil action".

Rule 56. *Summary Judgment.*

(a) FOR CLAIMANT. A party seeking to recover upon a claim, counterclaim, or a cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) FOR DEFENDING PARTY. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) MOTION AND PROCEEDINGS THEREON. The motion shall be served at least 10 days before

the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

D. STATEMENT OF THE CASE

Sam Tucky is a farmer. He raises jungle fruits, flowers and plants in Maunawili. The farm is about 7.11 acres and it is located in a rain forest on the windward side of the Island of Oahu.

Mr. Tucky entered possession by purchase from a party named Riley Crabb on November 12, 1954. He paid a premium to Mr. Crabb in the office of Kaneohe Ranch Company, Limited. Mr. Crabb held under "Lease No. 1030" and so does Mr. Tucky.

Lease No. 1030 is attached and marked Appendix "C". It originated December 28, 1946.

Mr. Tucky's possession was not disputed until about July 29, 1964 when a vice-president of the Kaneohe Ranch Company, Limited visited Mr. Tucky and other farmers holding under similar documents and told them that a housing project would start in the area and that Mr. Tucky and neighboring farmers would have to "get out" (R. 52).

A notice to quit was served on Mr. Tucky on September 2, 1964, for the alleged purpose of terminating his "tenancy" on March 2, 1965. Mr. Tucky responded

with an action in the Circuit Court of the First Judicial Circuit, State of Hawaii, Civil No. 16567 for Specific Performance of Lease No. 1030, Equitable Lein and Injunctive Relief. (This case remains on the docket (indisposed of as yet) R. 53-54).

Thereafter, and on November 29, 1965, the Kaneohe Ranch Co., Ltd. delivered a second letter to Mr. Tucky, (R. 54) part of which reads as follows:

> "You are hereby notified that the term of the aforesaid lease on the premises now occupied by you (said lease being Kaneohe Ranch Company, Lease No. 1030, dated December 28, 1946, and said term being subject to cancellation upon six months' written notice) will expire at midnight on June 30, 1966 and you are hereby instructed to quit and vacate the premises you now occupying at the end of the rental period expiring as aforesaid at midnight on June 30, 1966"

In consequence of this new interpretation placed on document 1030, Mr. Tucky filed a second suit on June 24, 1966. This is the suit upon which the Respondents procurred the summary judgment referred to herein. The respondents claimed the document was not ambiguous. The Respondents claimed that the habendum clause meant "subject to cancellation upon six (6) months written notice by either party. The underlined words "by either party" are not contained in the document.

The court accepted the proposition advanced by the Respondents and granted summary judgment and ordered the reversion of the 7.11 acres of Maunawili land to Kaneohe Ranch Co., Ltd., complete with all buildings and growing crops.

The Clerk's Minutes, second yellow page at end of Record of First Circuit Court's File, Civil No. 19540 recites:

February 10, 1967

9:50 AM Court convened and case was called. Mr. Garland stated his Motion. Mr. Ryan presented argument in opposition to the subject, citing 25 H 494. (Actually a 16 page memo of law was submitted citing 12 Hawaii cases & raising the federal issues sought to be reviewed herein.)

The court granted the motion for summary judgment and directed that the effective date of the order shall be March 1, 1967

10:52 AM Court Recesses.

Mr. Tucky discharged his lawyer, (Mr. Ryan) and obtained other counsel who brought on a Motion for Rehearing and Motion to Alter and Amend Judgment (R. 195-199). Mr. Tucky then returned to his original lawyer, who filed on March 13, 1967, A Notice of Appeal (R. 204-205).

The Brief on Appeal was duly filed on June 23, 1967, with the Clerk of the Supreme Court, State of Hawaii.

The law was extensively researched. In support of Petitioner's appeal a 51 page brief was presented containing a Table of Authorities of 2½ pages.

The federal issues sought to be reviewed were raised again on appeal.

The Court rendered an oral opinion after argument that the Appeal was without merit and thereafter entered a written opinion. (Appendix A)

Thereafter a Petition for Rehearing was duly filed

wherein the Appellant again raised the 13th Amendment and 14th Amendment, and also raised the 14th Amendment relative to the denial of due process of law and the equal protection of the law by the Supreme Court of the State of Hawaii by virtue of its oral opinion that the Appeal was without merit although the Appellant had sustained the allegations of error by proper authority.

Harold K. L. Castle herein has since died and there is presently pending a Motion for an Order "directing that James C. Castle, Henry W. Wong and Hawaiian Trust Company, Limited, Executors Under the Will and of the Estate of Harold K. L. Castle, Deceased be substituted in this appeal and action in the place and stead of Kaneohe Ranch Company, Limited."

E. WHY THE COURT SHOULD GRANT A WRIT

Summary judgment was rendered apparently upon a determination that there was no genuine issue as to any material fact and that the Respondents were entitled to a judgment as a matter of law.

As a matter of equity the result is very primitive.

> "Formerly, if the King wished for the property of any man, he took it without reward; even seized it by force, or took a portion only, just in accordance with his choice, and no man could refuse him. The same was true of every chief, and even the landlords treated their tenants thus.
> At present time such conduct is at an end. No chief whatever has power sufficient to do it now. Should one attempt it, he would instantly cease to be a chief on this archipelago." Laws of 1842. BURDENS of the Lower Classes. Chapter LIV. P. 133. Fundamental Law of Hawaii.

As a matter of history, Sam Tucky's rights, under the Constitution of the United States and the Constitution of the State of Hawaii so far have been determined to be exactly like the rights of tenants under the ancient Hawaiian feudal system.

Sam Tucky is just a citizen of the United States. He is not the spearhead of some pressure group, nor is he part of a minority or majority organization representing a particular interest. He is simply one man who has worked extremely hard and converted a portion of a rain-forest jungle into a beautiful and productive garden. He loved the land and he loved his labor and the things his labor produced He wants to keep them. That was his right under the document, the facts and the law.

The end result in this case is wrong. It was recognized as wrong in 1842 when Hawaii was a Kingdom and there was no United States Constitutional authority present. See *Laws of 1842, Burdens of the Lower Classes, Chapter LIV, P 133, Fundamental Law of Hawaii supra.* The end result in this case has no support in law or equity.

The United States Supreme Court should grant *Certiorari* because it is in the national interest to do so. Sam Tucky is just one of about 200,000,000 people who believe in, and rely upon, individual guaranteed rights. He happens to be at the perimeter of our nation. It is important to all to see the authority of the Constitution sustain a man who has committed no evil and who has labored long and hard in the good dirt of his country.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this case is peculiarly appropriate for the exercise of this Court's discretionary jurisdiction, and that this Petition for a *Writ of Certiorari* should be granted.

DATED at Honolulu, Hawaii, this 19 day of January, 1968.

Respectfully submitted,

JOSEPH A. RYAN
Attorney for Petitioner
Suite 303
925 Bethel Street
Honolulu, Hawaii

Appendix "A"

NO. 4659
IN THE SUPREME COURT OF HAWAII
OCTOBER TERM 1967

SAM TUCKY,
Petitioner-Appellant,
vs.
HAROLD K. L. CASTLE and
KANEOHE RANCH COMPANY, LIMITED,
Respondents-Appellees.

MEMORANDUM OF OPINION

The court having considered this case and having rendered an oral opinion finding that the appeal in this matter is without merit,

The judgment is affirmed.

Dated in Honolulu, Hawaii, this 14th day of November, 1967.

BY THE COURT:
/s/ William A. Richardson
Chief Justice

(SEAL)
Supreme Court
State of Hawaii

Appendix "B"

NO. 4659

IN THE SUPREME COURT OF THE STATE OF
IN THE SUPREME COURT
OF THE STATE OF HAWAII

SAM TUCKY, *Petitioner-Appellant,* vs. JAMES W. CASTLE, HAWAIIAN TRUST COMPANY, LIMITED and HENRY H. WONG, Executors of the Estate of HAROLD K. L. CASTLE, Deceased, and KANEOHE RANCH COMPANY, LIMITED, *Respondents-Appellees.*	Appeal from the Final Judgment FIRST CIRCUIT COURT Civil No. 19450 HON. BERNARD H. LEVINSON, *Judge*

JUDGMENT ON APPEAL

Pursuant to the Memorandum of Opinion of the Supreme Court of Hawaii filed on November 14, 1967, the Judgment appealed from is affirmed.

DATED: Honolulu, Hawaii, Dovember 12th, 1967.

Samuel K. Makekau
Clerk

APPROVED:
/s/ William S. Richardson
Chief Justice

(SEAL)
Supreme Court
State of Hawaii

APPENDIX C

This Indenture, made this 23th day of December, A. D. 1946, between the KANEOHE RANCH COMPANY, LIMITED, a corporation created and existing under the laws of Hawaii, having its principal office in Honolulu, in the City and County of Honolulu, Territory of Hawaii, of the first part, Lessor, and

CHOKICHI AND SUSUMU KISHABA of the second part, Lessee,

WITNESSETH:

That the Lessor in consideration of the rents to be paid and the covenants to be observed and performed by said Lessee as hereinbelow set forth, does hereby demise and sublet to the said Lessee:

All of those certain premises in MAUNAWILI, KAILUA, KOOLAUPOKO, OAHU, T.H., Territory of Hawaii, more particularly identified as follows, that is to say:

That certain piece or parcel of land situated in Maunawili, Kailua and containing an area of 5.11 Acres, more or less, as shown on "MAP OF MAUNAWILI - SHOWING LOCATION OF LEASES", dated November 5, 1946 filed in the office of the Lessor in Map Cabinet "G", Pigeon Hole "200", and indicated on said map as Lot No. 21; subject, however, to any existing rights-of-way and/or easements over, under and across the herein above described premises.

It is understood and agreed by and between the parties hereto that the property hereby demised (or property adjacent to or not far distant from the property hereby demised) has been utilized by the United States Government or it's armed forces as an impact or firing range or area for bombing, artillery, mortar or other forms of firing and that there may be within the property hereby demised, unexploded shells, bombs or other missiles; that the Lessee covenants and agrees to protect, indemnify and hold harmless said Lessor from any and all claims of whatsoever nature arising from any injury caused to the Lessee, his family, his employees and invited or permitted visitors or to any of his or their personal property which may result from any such unexploded shells, bombs or other missiles.

But reserving, however, a right or rights of way for wires and poles for the conducting of electricity and for trolleys and guy ropes, stays and stay anchors, and for any and all purposes in connection with the construction, working, maintenance and operation of the same, and also reserving a right of way for a railroad or other roads over and across the demised premises, also right of way for ditches, pipes and flumes for the conducting of water, and for the transportation of sugar cane and other plantation products and freight, whensoever the Lessor shall so require and notify the Lessee in writing, with the right of the Lessor and its successors and assigns and its or their agents, servants and employees to enter the demised premises to construct, erect, lay and maintain the same in good order and repair.

TO HAVE AND TO HOLD the said above mentioned premises, with the rights, easements, privileges and appurtenances to the same belonging, to the said Lessee; for the term of Ten (10) Years and to continue thereafter subject to cancellation upon six (6) months written notice commencing with the 1st day of January, 1947; but subject nevertheless to an annual rental of Seventy-Five and no/100 DOLLARS ($75.00)

said rent to be payable in lawful currency of the United States without demand, semi-annually in advance on the 1st day of January and July of each and every year during the term herein demised; if not so paid, it shall be subject to an addition of one (1) per cent of the amount then owing for each month, or part of a month, of delay.

AND THE SAID LESSOR hereby covenants and agrees with the Lessee that, upon the due payment of said rents and the observance and performance of the covenants, terms and conditions hereof to be observed and performed, the said Lessee, he or his heirs, executors, and administrators shall and may have, hold, possess and enjoy the demised premises for the term hereby demised without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through or under it.

EXHIBIT 7

AND THE SAID LESSEE, for [illegible] executors, administrators and assigns, hereby covenants and agrees with the Lessor, its successors and assigns:

(1) That the Lessee will pay said rents in manner and form aforesaid, and also all costs and expenses incurred by the Lessor in collecting same including reasonable attorney's and collector's fee.

(2) That the Lessee will pay all taxes, rates, charges and assessments of every nature and kind which may be imposed upon or assessed against the said premises, or any part thereof, or upon the improvements and crops thereon, whether the same be assessed to the Lessor or the Lessee, without deduction from the said rents.

(3) That the Lessee will, at his own expense, during the whole of the said term, make, build, maintain and repair all fences, sewers, drains and roads which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the said premises or any part thereof.

(4) That the Lessee will not assign, mortgage or sublet nor part with the possession or control of the whole or any portion of the demised premises, without the Lessor's consent in writing.

(5) That the Lessee will not make nor suffer any waste or strip or unlawful, offensive or improper use of said premises or any part thereof; nor use the premises for the storage, sale, manufacture, keeping for sale or barter of ale, wine, beer, spirits or other alcoholic liquors, or of opium, coca leaves, cocaine or any salt derivative or preparation of opium, coca leaves or cocaine; and will during the whole of said term keep the said premises including improvements, in a strictly clean and sanitary condition; and will also comply with all rules, regulations, ordinances and/or laws made by the Board of Health or other due authority of the Municipal, Territorial or Federal Government applicable to the said premises and improvements and will indemnify and hold harmless the Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of the said rules and regulations or of this covenant.

(6) That if at any time or times during the said term the government of the United States of America or of the Territory of Hawaii or any county, municipality or other subdivision of the Territory of Hawaii or any public service company shall condemn the said premises or any leasehold interest therein or any part or parts thereof for any public use or otherwise, then and in every such case, the estate and interest of the Lessee in the said premises so condemned shall at once cease and determine and the Lessee shall not by reason of such condemnation be entitled to any claim against the Lessor for compensation or indemnity for leasehold interest or otherwise, and all compensation payable or to be paid for or on account of said leasehold interest by reason of the condemnation as aforesaid shall be payable to and be the sole property of the Lessor, and if any award be made to the Lessee for his (or her) leasehold interest in said land, the Lessee will and does hereby assign the same to the Lessor; the rent shall be reduced in proportion to the area so taken.

PROVIDED, HOWEVER, that the Lessor and the Lessee shall be entitled to divide whatever amounts may be awarded as compensation for any improvements erected or placed by the said Lessee on the said demised premises so condemned and taken, on the following basis:

The Lessor shall be entitled to receive a share representing its reversionary interest in said improvements, to be figured on a basis of 6% per annum, discount compounded annually over the unexpired term of this lease. For example, if the sum of $1,000.00 should be awarded as compensation for the improvements erected or placed on the said demised premises by the Lessee, and so taken, and the unexpired term of the lease should amount to 7 years, the Lessor would be entitled to the sum of $1,000.00 discounted at the rate of 6% per annum compounded annually for the period of 7 years, that is, such sum as with interest at the rate of 6% per annum compounded annually for a period of 7 years would equal $1,000.00. The Lessee would be entitled to the balance of the said $1,000.00.

(7) That in case the land hereby demised or any portion thereof shall be taken from the Lessee by any title superior to the Lessor's title, then the Lessor shall not be held in damages for such taking, but the rent shall be reduced in proportion to the area so taken.

(8) That the Lessee will permit the Lessor, or its agents, from time to time, to enter the demised premises and to examine the condition thereof.

(9) That the Lessee, upon the written request of the Lessor, will erect promptly and at his own expense, a good and sufficient stockproof fence along the boundaries of the demised premises and will maintain and repair the same.

(10) That the Lessee will, during the term of this lease, keep any and all improvements and buildings on the demised premises insured against loss by fire in an amount as near to the value thereof as is practicable, in companies acceptable to the Lessor, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to the Lessor and Lessee as their interests may appear, and shall be deposited with the Lessor; that any money derived therefrom in the event of total or partial loss shall be applied to rebuilding or renovating improvements and buildings.

(11) That the Lessee will not impound or cause to be impounded or arrest for trespass, or proceed against the Lessor for trespass of, animals, of the said Lessor which may go upon the demised premises, or to hold the Lessor liable for damage caused by such animals upon the demised premises.

(12) That the Lessee will, in all respects, observe, keep and perform all the covenants on the part of the Lessee to be kept, observed and performed in and under any lease, whether recorded or not, under which the said Lessor may hold the demised premises or any part thereof, except covenants for payment of rent, insofar as such lease may apply to the premises hereby demised.

(13) That the Lessee will at his (or her) own expense, from time to time and at all times during the said term, well and substantially repair, maintain, amend and keep all buildings and improvements now or hereafter placed on the land hereby demised with all necessary reparations and amendments whatsoever; and will not make nor suffer any alteration of any buildings now or at any time hereafter built on the said land hereby demised, without the written consent of the Lessor.

(14) That the Lessee will not shoot or hunt on the demised premises nor fish in adjacent waters.

(15) That the Lessee will not, without the consent in writing of the Lessor, cut down, fell or injure, or suffer to be cut down, felled or injured, any trees or saplings now or hereafter growing upon the land hereby demised.

(16) That the Lessee, and all those claiming under him (or her), shall carefully avoid all or any interferences with or injury to the water ditches, channels, or canals, or water in the same, running through or crossing any portion of the demised premises, and shall or will permit the entry of the Lessor's agents or servants at all times to maintain and preserve such water ditches, or to enlarge the same; and the right to run water in such ditches is reserved to the Lessor.

(17) That the Lessee will eradicate and keep down noxious weeds or growths such as Lantana, Guava, Klu, Castor Bean, etc., upon the premises.

(18) That the Lessee will use the said premises for agricultural purposes only unless as may be otherwise allowed by written consent of the Lessor, and when so used for agricultural purposes shall follow such use in accordance with the usual standards and approved practices of good husbandry.

(19) In the event the owner of the fee simple title to the premises herein demised shall sell and convey said demised premises to anyone other than the Lessee during the term of this lease, he, the said owner, may at his option cause this lease to be cancelled, in which case said owner shall pay to the Lessee a sum equivalent to 1 per cent of the selling price for each unexpired year of the term of this lease, provided, however, that the total sum shall in no case exceed 5 per cent of said selling price. In such event the Lessee hereby specifically agrees to cancel and terminate this lease without damages or claims against the Lessor immediately upon receiving notice in writing thereof.

PROVIDED, HOWEVER, in the event of a sale to others than the Lessee, the Lessee shall be reimbursed for any permanent improvements erected by the Lessee, which shall be evidenced by vouchers to be deposited with the Lessor upon completion of same, in an amount equivalent to 1/10 of the amount expended multiplied by the number of years of the term hereof remaining unexpired; for example, should the Lessee have expended the sum of $5,000.00, and the lease cancelled at the end of the 3rd year, the Lessee would be entitled to 1/10 of $5,000.00, multiplied by 7, which would amount to $ 3,500.00

(20) That upon the expiration or sooner determination of this lease as hereinbefore provided, the Lessee will peaceably and quietly quit and surrender the demised premises, together with the improvements thereon standing or placed, the same to be in good order and condition, to the Lessor, its successor or assigns.

PROVIDED, HOWEVER, and this lease is upon condition that, if there be any default in the payment of the rents above set forth, or in the observance and performance of any other covenant, term or condition hereof to be observed and performed by the Lessee, or the said Lessee shall become bankrupt, or shall abandon the said premises, then, or in any of such cases, the Lessor may at once re-enter the said premises or any part thereof in the name of the whole and, upon or without such entry, at their option terminate this lease without service of notice or legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract.

AND IT IS EXPRESSLY STIPULATED that the waiver by the Lessor of any breach shall not operate to extinguish the covenant, term or condition, the breach whereof has been waived, nor be deemed a waiver of the right to declare a forfeiture for any breach, but that the same shall remain and continue in full force and effect, subject to any future breaches; and, likewise, that the summary termination of this lease under this provision shall not operate to deprive the Lessor of any other rights it may have against the Lessee for rents due up to the time of such termination, or for any other debt, loss, damage or injury.

If more than one person signs this lease as Lessee, then the word "Lessee" wheresoever it may appear herein, and all words relating to the Lessee are to be construed as plural.

IN WITNESS WHEREOF, the said Lessor has caused its corporate seal to be hereunto attached and its name to be signed by its proper officers thereunto duly authorized, and the Lessee has hereunto set his hand to this instrument and another of like date and tenor, the day and year first aforesaid.

KANEOHE RANCH COMPANY, LIMITED,

By _____
Its President

By _____
Its

Witnessed by:

T. K. Hong

Chiyeki Kishaba

Susumu Kishaba

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the State of Hawaii.

Dated, at Honolulu, Hawaii, Feb. 13 A.D. 1968

Clerk, Supreme Court, State of Hawaii

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